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on the Establishment of an
International Criminal Court**

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COMMITTEE OF THE WHOLE

ARTICLE 5

CRIMES WITHIN THE JURISDICTION OF THE COURT

Crimes against humanity

RECOMMENDATIONS OF THE COORDINATOR

1. At its 3rd and 4th meetings, on 16 June 1998, the Committee of the Whole considered article 5 entitled "Crimes within the jurisdiction of the Court". The Committee entrusted Mr. Waleed Sadi (Jordan) with the task of coordinating informal consultations on the text of the definition of "Crimes against humanity".
2. As a result of the informal consultations, the Coordinator submits to the Committee of the Whole the following text:

Crimes against humanity

1. For the purpose of this Statute, a crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
 - (a) Murder;
 - (b) Extermination;
 - (c) Enslavement;
 - (d) Deportation or forcible transfer of population;

* Reissued for technical reasons.

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g)¹ Rape or other violent sexual acts, or enforced prostitution [, or enforced pregnancy];

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender² or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(i bis) The crime of apartheid;

(j) Other inhumane acts of a similar character intentionally³ causing great suffering, or serious injury to body or to mental or physical health.⁴

[(j bis) Acts of terrorism.]⁵

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts⁶ referred

¹The formulation of this subparagraph should be reconsidered in the light of the relevant discussions in the context of the definition of war crimes.

²"Gender" refers to male or female.

³The need for the reference to intention requires further discussion in the light of Part 3 on "General principles of criminal law".

⁴An additional proposal on this subject is contained in document A/CONF.183/C.1/L.17.

⁵Several delegations supported this proposal while others did not. There was no consensus on this matter.

⁶One delegation expressed reservations with regard to the expression "multiple commission of acts".

to in paragraph 1 against any civilian population, pursuant to or in furtherance of ⁷ a State or organizational policy to commit such attack;

(a bis) [(a)] "Extermination" includes the intentional infliction of conditions of life, inter alia, the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(a ter) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the deprivation of physical liberty in the course of trafficking in persons, in particular women and children for the purpose of sexual exploitation;

(b) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(c) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(d) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(d bis) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1 above, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(e) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give

⁷Some delegations favoured the insertion of the term "knowingly" before the expression "in furtherance of".

information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

[(f) (i) An act of terrorism, in all its forms and manifestations involving the use of indiscriminate violence, committed against innocent persons or property intended or calculated to provoke a state of terror, fear and insecurity in the minds of the general public or populations resulting in death or serious bodily injury, or injury to mental or physical health and serious damage to property irrespective of any considerations and purposes of a political, ideological, philosophical, racial, ethnic, religious or of such other nature that may be invoked to justify it, is a crime.

(ii) This crime shall also include any serious crime which is the subject matter of a multilateral convention for the elimination of international terrorism which obliges the parties thereto either to extradite or to prosecute an offender.]
